IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 985 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANHARLAL BHAGWANJIBHAI BHUVA - Petitioner(s)

Versus

DY.SECRETARY & 2 - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1 - 2.
MR PV HATHI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/03/2006

ORAL JUDGMENT

1.In the present petition the petitioner, a retired employee of the Jamnagar District Panchayat has challenged the order dated 11th August 2004 passed by

the State Government. By the said order, the Disciplinary Authority imposed cut of Rs.1,000/- per month from the pension payable to the petitioner for a period of five years.

2. The petitioner was discharging his duties as Divisional Accountant at the relevant time. For certain payments made by the District Panchayat, the petitioner was served with a chargesheet dated 27th June 2003. In all three charges were leveled against the petitioner in the said chargesheet. Charge No.1 against the petitioner was that though there was deficit of grant as on 31.3.2002, instead of adjustment of the grant in the year 2002-03, payments were made to the tune of Rs.59.07 lacs to several contractors and thus the petitioner authorized such payments contrary to rules. Second charge against the petitioner was that contrary to requirement of rule 209 of the Gujarat Budget and Finance Rules, the petitioner did not maintain the Dispute Register and bills were not brought in the said register. Since the third charge leveled against the petitioner in the said chargesheet was held to have been not proved, it is not necessary to go into the details of such a charge.

3. Upon conclusion of the inquiry, the Inquiry Officer

held that charge article 1 stands partially proved and charge article 2 stands proved. Since the petitioner had retired in the meantime with effect from 31.10.03, final order of punishment of cut in pension came to be passed by the State Government.

4. While issuing notice, this Court had recorded that the Court is inclined to consider the case prima facie only on proportionality of the punishment. The grievance of the petitioner is that though by the impugned order, deduction of Rs.1000/- per month from the pension payable to the petitioner is ordered, in reality, an additional amount of Rs.600 is also being deducted from his pension.

5. Learned advocate Shri Dagli for the petitioner submitted that the petitioner had raised objections to the release of payments to the contractors, however, the higher authorities authorized such payment. The petitioner had never paid or authorized payments and had in fact opposed the release of payments on the ground that the grant is not sufficient. He further submitted that the petitioner was not provided with the Dispute Register and therefore cannot be held guilty of either of the two charges. He further submitted that there was sufficient justification in not being able to

maintain the grant register also. In any case, he submitted that the penalty imposed on the petitioner is harsh and excessive when no monetary loss is caused by the petitioner to the State Government.

6. Learned AGP Ms.Chandarana and learned advocate Shri P.V.Hathi appearing for the respondents submitted that the departmental inquiry had been conducted against the petitioner following the requirements of principles of natural justice and that the factual findings arrived at by the authority should not be interfered with by this Court. It was further contended that the penalty has been imposed by the competent authority choice of which is with the Disciplinary Authority and this Court should not interfere with the quantum of punishment. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain, 2005 SCC (L&S) 567 in support of this contention. It was also contended that the Disciplinary Authority ordered deduction in pension by Rs.1,000/-. The pension includes interim relief. When the basic pension gets diminished by Rs.1,000/-, consequential reduction in the interim relief would ensure that there will be a total cut of Rs.1,600 from the pension payable to the petitioner.

7.Having heard the learned advocates appearing for the parties, following aspects emerge.

(i)It is not in dispute that the petitioner raised objection to the release of all nine payments made during his tenure, despite which the higher authorities insisted that payments be released. The petitioner had in fact, made notings that the grant is deficient and it is, therefore not possible to release the payments. As Accountant, the petitioner, in my view has discharged his duties by raising appropriate objection. It is not the case of the respondents coming forth either from the chargesheet or from the impugned order that the petitioner actually made the payments.

(ii)It is not the case of the respondents that the amounts were not due and payable or that there is any loss to the Government.

(iii)In fact the Disciplinary Authority also found that charge article 1 stands only partially proved to the extent that the petitioner did not bring these cases on the Dispute Register. To that extent, there is hardly any scope for debate and the Authorities are justified in concluding that the petitioner did not strictly follow the rules in this regard. The defence of the petitioner that no such register was made

available to him or that certain registers were being maintained by some other officer cannot be gone into and accepted in the facts of the present case.

The totality of the facts and circumstances, therefore, would be that the petitioner is being punished for certain minor lapses in procedure in not including certain cases in the Dispute Register whereas there is no dispute about the fact that the petitioner did object in writing to such payments being released and the payments were released by some other authority upon the higher authority overruling the objection of the petitioner. There is nothing on record that against persons overruling such objections any action has been initiated.

8. Considering all these aspects of the matter, I find that the punishment of imposition of cut of Rs.1,000/- from the pension payable to the petitioner for a period of five years is extremely harsh and excessive. Normally, when this Court comes to the conclusion that the penalty imposed is excessive, it would be appropriate to remand the proceedings to the Competent Authority for reconsideration on the question of

punishment. However, the Hon'ble Supreme Court in the case of B.C.Chaturvedi v. Union of India, AIR 1996 SC 484, has observed that in rare cases to avoid further delay, the Court may substitute the punishment instead of remanding the proceedings.

9. The petitioner is a pensioner and has retired from service since 2003. Remanding the proceedings to the Government for passing a fresh order would only further delay the conclusion of the departmental proceedings and would add to the miseries of the petitioner. In that view of the matter, I find it appropriate to substitute the penalty imposed by the Government on the petitioner by providing that there will be cut in the pension of the petitioner by Rs.1,000/- for a period of one year instead of five years as provided by the Government.

10. The implementation of the order of cut in pension is also in my view erroneous. In the impugned order, what is provided for is to cut Rs.1,000 per month for a period of five years from the petitioner. The contention that the cut of Rs.1000 in pension would automatically result into proportionate reduction in the interim relief payable to the petitioner, therefore, cannot be accepted.

11.With the above substitution and clarification, the petition is allowed to the above extent with no order as to costs. The excess recovery made from from the pension of the petitioner shall be released expeditiously.

(Akil Kureshi, J.)

(vjn)